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In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS
v.
INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL., RESPONDENTS

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS
v.
STATE OF HAWAII, ET AL., RESPONDENTS

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE FOURTH AND NINTH CIRCUITS

BRIEF OF *AMICUS CURIAE* DAVID BOYLE IN SUPPORT OF RESPONDENTS

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AMICUS CURIAE STATEMENT OF INTEREST

The present *amicus curiae*, David Boyle (hereinafter, "Amicus"),[1] wrote the Court a pre-certiorari brief in the instant case, and now supplements it with this merits brief.

SUMMARY OF ARGUMENT

President Trump's ending the White House Ramadan festival helps show Administration animus towards Muslims.

Executive Order 13,780, 82 Fed. Reg. 13,209 (Mar. 9, 2017) ("The Order") may be baseless, and little better than "performance art".

The Court should remember the difficulty of life for immigrants and refugees.

The Court has its deriders, but its Members are still competent to handle issues like the Muslim ban, and much else.

The Order risks dishonoring America and its heroes, post-9/11.

ARGUMENT

I. TRUMP'S CANCELLATION OF THE RAMADAN FESTIVAL AT THE WHITE HOUSE HELPS SHOW GOVERNMENT ANIUMS TOWARDS ISLAM

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[1] No party or its counsel wrote or helped write this brief, or gave money for the brief, *see* S. Ct. R. 37. Blanket permission by Petitioners to write briefs is filed with the Court, and Respondents have e-mailed Amicus letters of permission.

Monday was the sixteenth anniversary of "9/11", Osama bin Laden's terrorist attack on the United States. While appropriate measures must be taken to prevent another such attack, the Order is not one such measure, and could even make another attack more likely, since the Order may exemplify animus, which tends to cause unrest, hatred, and violence.

The Order, *see id.*, has no explicit condemnation of Muslims, but, as Respondents' merits briefs amply show, the Order seems to make relatively little sense as a national-security measure, especially in present context. Part of that context, Amicus notes, is Trump's cancellation of the White House Ramadan festival, *see, e.g.*, Jennifer Hansler, *Breaking with tradition, Trump White House forgoes Ramadan dinner*, CNN, updated 7:56 p.m., June 24, 2017, http://www.cnn.com/2017/06/24/politics/white-house-ramadan-celebration/index.html (all links in this brief last visited Sept. 12, 2017),

> For the first time in nearly two decades, the White House did not host an iftar dinner to commemorate Ramadan, the Islamic holy month of fasting.
>
> . . . .
>
> By not hosting a dinner, Trump breaks with an annual tradition upheld by the past three administrations. . . . They were typically attended by prominent members of the Muslim community as well as members of Congress and diplomats from Muslim countries.

> Secretary of State Rex Tillerson also broke with decades of tradition by rejecting a request by the State Department's Office of Religion and Global Affairs to host a reception marking Eid al-Fitr . . . .
>
> Since 1999, Tillerson's five Republican and Democratic predecessors have hosted either an iftar dinner to break the fast during Ramadan or an Eid al-Fitr reception at the end of the monthlong holiday. . . .

Id. Trump also issued a statement offering good wishes for Ramadan, *see id.*, but actions speak louder than words.

That cancellation contrasts greatly with the continuance of, e.g., the Passover festival, *see, e.g.*, Maya Rhodan, *White House to Host Passover Seder*, Time, Apr. 10, 2017, http://time.com/4732939/passover-2017-white-house-donald-trump/, "The White House will host a Passover seder Monday evening, continuing a tradition started under President Obama in 2009." *Id.* There is no reason for canceling *only* the Ramadan festival, and not other religious festivals, except for raw animus.

This is one reason that Amicus is writing a brief supporting Respondents this time, although his pre-certiorari brief supported neither party. Time has made it clearer that the Order lacks much, or any, rational underpinning at all. Is it a mere mirage of sorts, then?

II. THE ORDER CAN BE VIEWED AS "P.R." OR "PERFORMANCE ART", GIVING THE SHADOW OF SECURITY POLICY SANS REAL SUBSTANCE

As Amicus mentioned in his pre-certiorari brief: since "There is no compulsion in religion", *The Koran*, Sura 2:256, the Order thus may be *less liberal than the Koran*, in that the Order—like its earlier version—exerts a "TRAVEL BAN", says the President, @realdonaldtrump, Twitter, https://twitter.com/realDonaldTrump/status/871899511525961728 (June 5, 2017, 6:20 p.m.), on some largely-Islamic nations and risks illegal religious animus, per the court below.

Why is Saudi Arabia, donor of 15 9/11 hijackers, not travel-banned by the Order? Or, after Turkish President Erdoğan's bodyguards *physically attacked Americans* on May 16, 2017 in Washington, D.C., why was Turkey not banned? *See, e.g.*, Asbarez, *Breaking: House Unanimously Condemns Erdogan-Ordered Attack on Protesters*, ER.ANCA.org, https://er.anca.org/breaking-house-unanimously-condemns-erdogan-ordered-attack-on-protesters (undated).

So, the Order may be but a Baudrillard-style "hyperreality", a mere simulacrum of rational foreign policy, "extend[ing] the absence at the heart of politics", Jean Baudrillard, *The Spirit of Terrorism*, Le Monde, Nov. 2, 2001 (tr. Rachel Bloul), *available at* https://cryptome.org/baud-terr.htm. The Order almost resembles a type of "performance art" designed to make (some) Americans feel safer from "Islam", without actually producing safety.

Indeed, such a measure as the Order, in its arguable presentation of Arabs or Muslims as "generic enemy", may create the kind of animus that led Jeremy Christian—an ironic cognomen—to murder two defenders of women against Christian's Islamophobic abuse in Portland, Oregon on May 26, 2017. *See, e.g.*, Wikipedia, *2017 Portland train attack*, https://en.wikipedia.org/wiki/2017_Portland_train_attack (as of 14:15 GMT, Sept. 11, 2017).

III. LIFE AS AN IMMIGRANT OR REFUGEE IS NOT ALWAYS EASY

Amicus also urges the Court to remember the truth, even if a truism, that refugees and immigrants often have difficult lives. Thus, they should not be subject to additional needless misery by the Order. ...Popular culture reminds us of the ugliness of prejudice against newcomers: *see, e.g.*, the work of recently-deceased Walter Becker (RIP) and the rest of Steely Dan in *The Royal Scam*, *on* The Royal Scam (ABC 1976). The song, *see id.*, tells a harrowing tale of abuse against Puerto Rican or other immigrants. *See also, e.g.*, Tom Petty and the Heartbreakers, *Refugee*, *on* Damn the Torpedoes (Backstreet 1979): "Everybody's had to fight to be free/You see you don't have to live like a refugee (don't have to live like a refugee)", *Refugee*, *supra*.

So, while the Order may not be a "royal scam", it may not be humane or legal, either. —And one notes, as a practicality, that dealing with difficult problems like the Order can benefit from having a stable Court to deal with them.

IV. IN THESE DIFFICULT TIMES, OLD HANDS' RETIREMENT FROM THE COURT COULD MEAN INSTABILITY RE CONTROVERSIAL CASES LIKE THE INSTANT CASE—AND ALSO INSTABILITY FOR THE NATION

Naturally, the heading above refers to no one in particular. Amicus is just offering a general observation, that in these interesting times, with so much at stake, whether Muslim bans, gay-wedding cakes, partisan gerrymandering, etc., it could be damaging to the Nation for any experienced Justice to retire from the Court, when instead he or she could serve for many years more with distinction and honor, and keep someone else with less distinction and honor from being put on the Court. Amicus looks forward to the Court retaining its Members for many years.

However, and crazily enough, not everyone thinks the Court is terribly competent. A retiring (but not always retiring) Midwesterner, Richard Posner, has said

> that he thought the country's high court was "awful" and the result of a process that had become too political.
>
> "I think it's reached a real nadir," Posner said at the Seminary Co-Op Bookstore. "Probably only a couple of the justices, (Stephen) Breyer and (Ruth Bader) Ginsburg, are qualified. They're OK, they're not great."

Jason Meisner and Patrick M. O'Connell, *Richard Posner announces sudden retirement from federal appeals court in Chicago*, Chi. Trib., Sept. 1, 2017, 7:13 p.m., http://www.chicagotribune.com/news/local/breaking/ct-judge-richard-posner-retires-met-20170901-story.html. Wow. (If "Dick Po." knows so much, perhaps he could have been a one-man Supreme Court, all on his lonesome?)

Another colorful fellow has also lambasted the Court, *see, e.g.*, Liz Goodwin, *With swearing-in, Trump to come face-to-face with justice he has berated as a 'dummy'*, Yahoo News, Jan. 19, 2017, https://www.yahoo.com/news/with-swearing-in-trump-to-come-face-to-face-with-justice-hes-berated-as-a-dummy-155955664.html (Donald Trump uses words like "dummy", "bull---t", "disloyal", and "stupidity" to describe Chief Justice or his ideas).

But Amicus, like perhaps most Americans, does ***not*** see the Court as being pestiferous, dimwitted clowns. Moreover, the Court are not a bunch of Joe Arpaios. Amicus expects the Court to say and do things that make Americans, and decent immigrants and refugees who want to be Americans, proud.

* * *

One proud American was Humayun Khan, a Muslim soldier who died for the Nation, *see* Wikipedia, *Humayun Khan (soldier)*, https://en.wikipedia.org/wiki/Humayun_Khan_(soldier) (as of 21:14 GMT, Aug. 31, 2017). He represented, and represents, America's best.

Id. On that note, the Order risks dishonoring the memory of the victims of 9/11, and the memory of American heroes like Khan. And this honorable Court—being "honorable"—would not want to promote dishonor or oppression in our Nation. which is "the land of the free, and the home of the brave." Francis Scott Key, *The Star-Spangled Banner* (1814).

CONCLUSION

The Court should give Respondents at least the degree of relief previously given, or maybe the full relief Respondents request; and Amicus humbly thanks the Court for its time and consideration.

September 13, 2017 Respectfully submitted,

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